

EXHIBIT E

From: Brown, Donald
Sent: Monday, February 04, 2008 3:39 PM
To: 'dnt@cogganlaw.com'
Cc: Platt, Robert; Lee, Mark
Subject: proposed protective order in TM v. RMG

David:

Upon further review of the proposed Stipulated Protective Order we sent you some time ago, we would like to make a few revisions, both to correct some typos and inconsistencies and to revisit how the order would relate to other actions. Attached is a revised, redlined draft, showing the changes to the prior version. Please contact us regarding the proposed order at your convenience.

Regards,

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17 **UNITED STATES DISTRICT COURT**

18 **CENTRAL DISTRICT OF CALIFORNIA**

20 TICKETMASTER L.L.C., a Virginia
21 limited liability company,

Case No. CV 07-2534-ABC (JCx)

22 Plaintiff,
**STIPULATED PROTECTIVE
ORDER**

23 vs.

24 RMG TECHNOLOGIES, INC., a
Delaware corporation, and DOES 1
through 10, inclusive,

25 Defendants.

1 RMG TECHNOLOGIES, INC., a
 2 Delaware corporation,

3 Counterclaim-Plaintiff,

4 vs.

5 TICKETMASTER L.L.C., a Virginia
 6 limited liability company,
 IAC/INTERACTIVE CORP., a
 7 Delaware corporation and ROES 1
 through 10, inclusive,

8 Counterclaim-Defendants.

9
 10 To expedite the flow of discovery material, facilitate the prompt
 11 resolution of disputes over confidentiality, adequately protect material entitled to be
 12 kept confidential, and ensure that protection is afforded only to material so entitled,
 13 it is, pursuant to the Court's authority under F.R.C.P. 26(c)(7), and with the consent
 14 of the parties, hereby ORDERED:

15 1. **Scope of Order.** This Order is intended to facilitate the parties'
 16 production of documents as part of voluntary disclosure and in response to
 17 discovery requests. Nothing in this order is to be construed to expand or limit the
 18 parties' discovery obligations. This Order covers the production and use of all
 19 Discovery Materials in this action not previously ordered to be produced by the
 20 Court that constitute, contain or disclose, in whole or in part, information which the
 21 designating party deems to be "Confidential Information" or "Sensitive
 22 Confidential Information." All Documents, Pleadings, and testimony containing
 23 Confidential Information or "Sensitive Confidential Information" shall be protected
 24 in accordance with the terms of this Order. Although Discovery Materials and
 25 Pleadings that quote, summarize, or contain materials entitled to protection may be
 26 accorded status as Confidential Information or Sensitive Confidential Information,
 27 to the extent feasible these materials shall be prepared in such a manner that the
 28

1 Confidential Information or Sensitive Confidential Information is bound separately
 2 from that not entitled to protection.

3 2. **General Definitions.** For purposes of this Order, the following
 4 terms have the following meanings:

5 a. "Document" shall mean and include, without limitation,
 6 all materials, electronic information and tangible things defined as broadly as
 7 permitted under Federal Rule of Civil Procedure 34.

8 b. "Discovery Materials" shall mean and include, without
 9 limitation, Documents, responses to interrogatories, requests for admissions, or
 10 other discovery requests, physical objects, samples, CD-ROMs, tapes, or other
 11 items, deposition transcripts and exhibits thereto, and information provided by or
 12 on behalf of the Parties or any third party pursuant to subpoena or otherwise created
 13 or included in the course of discovery.

14 c. "Pleadings" shall mean and include, without limitation,
 15 all papers, motions, briefs, affidavits, declarations, exhibits, etc., filed with the
 16 Court.

17 d. "Party" or "Parties" shall mean and include the parties to
 18 this litigation and their respective current and former officers, employees, agents,
 19 affiliates and subsidiaries.

20 e. "Designating Party" shall mean the Party designating
 21 Discovery Material as "Confidential Information" or "Sensitive Confidential
 22 Information."

23 3. **Confidential Information Defined.** For purposes of this Order,
 24 "Confidential Information" shall mean and include any information (regardless of
 25 how it is generated, stored, or maintained), including Documents, Discovery
 26 Materials and Pleadings, that contains information within the scope of Federal Rule
 27 of Civil Procedure 26(c) or which is a trade secret, proprietary, confidential
 28 commercial or business information, or otherwise confidential or private. For

1 certain limited types of "Confidential Information," the producing party may further
 2 designate such Confidential Information as "Sensitive Confidential Information," as
 3 discussed more fully in Section 4 below. "Confidential Information" shall not
 4 include Documents that have been ordered produced before entry of this protective
 5 order by a previous order of the Court. Disclosure of such Documents shall
 6 continue to be governed by the terms of any such previous order.

7 4. **Sensitive Confidential Information Defined.** "Sensitive
 8 Confidential Information" is information which, if known by the party to whom it is
 9 disclosed, would be inherently harmful to the Designating Party's business.
 10 "Sensitive Confidential Information" may include the Designating Party's
 11 proprietary financial information or reports, to the extent any such information or
 12 reports is not relevant to any claim for damages. "Sensitive Confidential
 13 Information" may not include any information, testimony or Documents relevant to
 14 any Designating Party's damages claims or calculations, or other information
 15 ordered by the Court to be disclosed under particular conditions and to specified
 16 parties. "Sensitive Confidential Information" shall not include Documents that
 17 have been ordered produced before entry of this protective order by a previous
 18 order of the Court. Disclosure of such Documents shall continue to be governed by
 19 the terms of any such previous order.

20 5. **Designating Protected Material.** All designations shall be
 21 made in good faith by the Designating Party and made at the time of disclosure,
 22 production, or tender, provided that the inadvertent failure to so designate does not
 23 constitute a waiver of such claim, and a producing party may so designate the
 24 information after such information has been produced, with the effect that such
 25 information is thereafter subject to the protections of this Order. The designation of
 26 Discovery Materials in the form of Documents and Discovery Materials other than
 27 depositions or other pretrial testimony as Confidential Information or Sensitive
 28 Confidential Information shall be made by the Designating Party in the following

1 manner:

2 a. Documents designated "Confidential" shall be so marked
 3 by affixing the legend "CONFIDENTIAL" or similar confidential designation on
 4 each page containing any Confidential Information (or in the case of computer
 5 medium on the medium and its label and/or cover) to which the designation applies.

6 b. Documents designated "Sensitive Confidential" shall be
 7 so marked by conspicuously affixing the legend "SENSITIVE CONFIDENTIAL"
 8 on each page (or in the case of computer medium on the its label and/or cover) to
 9 which the designation applies. Designations of "Sensitive Confidential" shall
 10 constitute a representation that such Discovery Material has been reviewed by an
 11 attorney for the Designating Party and that there is a valid basis for such
 12 designation because the relevant Discovery Material is highly confidential, the
 13 disclosure of which is likely to be commercially damaging to the Designating Party.
 14 Such information should not be disclosed to any employees of the Party receiving
 15 such information, absent Court order, even though employees are bound by this
 16 Order and Agreement.

17 c. If a Document has more than one designation, the more
 18 restrictive or higher confidential designation applies.

19 d. Documents that have been ordered produced before entry
 20 of this Order by a previous order of the Court shall not be designated
 21 "Confidential" or "Sensitive Confidential." Disclosure of such Documents shall
 22 continue to be governed by the terms of any such previous order.

23 6. **Designation of Deposition Testimony.** All depositions taken
 24 in this case and the transcripts thereof shall automatically be treated as Sensitive
 25 Confidential Information for 20 days after receipt of the transcript. This 20-day
 26 period will begin running the day after the transcript is received by counsel for the
 27 party defending the deposition and will conclude at the end of the 20th consecutive
 28 day (including weekends and holidays). Any confidentiality designation must be

1 sent to opposing counsel by the end of the 20th day. During the deposition or
 2 during this 20-day time period, any Party may designate the deposition or any
 3 portion thereof as Confidential Information or Sensitive Confidential Information.
 4 Upon delivery of such designation to the other Party, the entire deposition transcript
 5 or the designated portion thereof shall be treated as Confidential Information or
 6 Sensitive Confidential Information subject to this Stipulation. If any deposition
 7 transcript or portion thereof has not been designated as Confidential Information or
 8 Sensitive Confidential Information by the expiration of the 20-day period after
 9 receipt of the transcript, that deposition or portion will no longer be Confidential
 10 Information or Sensitive Confidential Information.

11 **7. Basic Disclosure Principles.** Neither the Parties nor their
 12 counsel shall permit disclosure of Confidential Information or Sensitive
 13 Confidential Information to anyone except as provided by this Order, and only after
 14 the conditions stated in this Order have been met.

15 **8. Disclosure of Confidential Information.** Confidential
 16 Information may not be disclosed to any person except:

17 a. Any Party to this action, including their Information
 18 Technology staff;

19 b. Counsel for the Parties in this action, including their
 20 paralegals and clerical staff, experts, consultants and in-house counsel;

21 c. Experts (whether consulting or testimonial) in this action
 22 to whom disclosure is reasonably necessary to the conduct this action , or to
 23 maintain the security of the ticketmaster.com website, provided that experts shall
 24 not have access to Confidential Information or Sensitive Confidential Information
 25 without having first read, acknowledged, and agreed to be bound by this Order by
 26 executing the Declaration attached as Exhibit A;

27 d. The Court and its personnel;

28 e. Court reporters engaged for depositions, hearings or trial;

1 f. Witnesses in this action to the extent necessary for the
 2 conduct of this litigation and who have first signed the Agreement to be Bound by
 3 Protective Order attached as Exhibit A;

4 g. The author(s) or any recipient of the document or the
 5 original source of the information in any document; and

6 h. Professional vendors that provide litigation support
 7 services (e.g., photocopying, videotaping, translating, preparing exhibits or
 8 demonstrations, etc.) and their employees who have first signed the Agreement to
 9 be Bound by Protective Order attached as Exhibit A.

10 9. **Disclosure of Sensitive Confidential Information.** Sensitive
 11 Confidential Information shall be subject to the same restrictions as Confidential
 12 Information but Sensitive Confidential Information may only be disclosed to the
 13 parties identified in Sections 8(b)-(e) and (g)-(h), above, and 8(f) above to the
 14 extent the witness currently has or would be expected to have knowledge of the
 15 contents of the document, and to no one else.

16 10. **Use of Discovery Material.** Confidential Information and
 17 Sensitive Confidential Information produced in this litigation shall be used for
 18 purposes of this action and to maintain the security of ticketmaster.com. The
 19 persons or entities identified in Sections 8-9, above, to whom Confidential
 20 Information or Sensitive Confidential Information is disclosed pursuant to this
 21 Order shall not make any copies of or use such Confidential Information or
 22 Sensitive Confidential Information for any purpose, whatsoever, except those
 23 related to this action or to maintain the security of ticketmaster.com. Nothing in
 24 this Order shall prohibit any person or entity owning rights in or to Confidential
 25 Information or Sensitive Confidential Information from using such information in
 26 any manner consistent with such ownership rights, including, for example, the use
 27 of Confidential Information maintained by the Parties in the ordinary course of the
 28 Parties' business, though any prohibition or restriction on any such use of such

1 Confidential Information or Sensitive Confidential Information in any previous
 2 order of the Court shall continue to govern use of such information. This Order
 3 shall not limit the right of any Party to assert any claim in this or any other action.

4 11. **Offering Materials into Evidence.** If in connection with any
 5 motion or other proceeding in this action, any Party intends to offer into evidence,
 6 reference, or attach as exhibits to any Pleading any Documents or other materials
 7 that would reveal or tend to reveal Confidential Information or Sensitive
 8 Confidential Information, such evidence shall be redacted to remove all
 9 Confidential Information or Sensitive Confidential Information that is not
 10 reasonably necessary for the Court to understand the purpose of the Document as
 11 described in the Pleading and to effect the reasonable purpose of the offering party
 12 in submitting the document.

13 12. **Filing of Materials Containing Confidential Information.**
 14 When a Party intends to file with the Court, or otherwise introduce into evidence,
 15 any Documents, testimony, or any other material containing Confidential
 16 Information or Sensitive Confidential Information that cannot be redacted pursuant
 17 to Section 11, above, counsel for the filing or offering party shall notify counsel for
 18 the Designating Party of such intent. Such notifications shall be made within a
 19 reasonable time not less than two business days before filing, such that the
 20 Designating Party has an opportunity to object to the necessity of the disclosure of
 21 the Document as presented and to work out an acceptable alternative to the
 22 proposed disclosure. The parties shall endeavor to reach agreement on any
 23 redactions or other methods which may be available to permit the filing or
 24 introduction of the Confidential Information or Sensitive Confidential Information
 25 with the Court such that the evidentiary objectives of the offering party can be met
 26 without disclosure of Confidential Information or Sensitive Confidential
 27 Information.
 28

1 13. **Filing Under Seal.** Any Confidential Information or Sensitive
 2 Confidential Information filed with the Court shall be filed in a sealed envelope
 3 bearing the designation "Confidential: Subject to Protective Order."

4 14. **Right To Redact.** Notwithstanding the right to designate
 5 information as Confidential or Sensitive Confidential, the Parties may redact from
 6 Discovery Material information that would qualify as Sensitive Confidential
 7 Information under this Order, but which is irrelevant or otherwise not responsive to
 8 the discovery request giving rise to production of the Discovery Material.

9 15. **Duration.** This Order shall continue to be binding throughout
 10 and after the conclusion of this action, including any appeal thereof. This Order, as
 11 an Agreement, shall remain in effect until all Confidential Information or Sensitive
 12 Confidential Information is returned to the Designating Party or destroyed, as
 13 provided below. Within thirty (30) days after termination of this action by
 14 dismissal, final non-appealable judgment or otherwise, each Party shall return to
 15 counsel for the Designating Party all information designated Confidential
 16 Information or Sensitive Confidential Information under this Order, including all
 17 copies, prints, excerpts, and other reproductions of said information, however
 18 generated or maintained. In the alternative, counsel receiving Confidential
 19 Information or Sensitive Confidential Information may supervise the destruction of
 20 all Confidential Information or Sensitive Confidential Information, including all
 21 copies, prints, excerpts, and other reproductions of said information, however
 22 generated or maintained. Counsel shall then advise all parties' counsel in writing
 23 that all Confidential Information or Sensitive Confidential Information, including
 24 all copies, prints, excerpts, and other reproductions of said information, however
 25 generated or maintained, have been destroyed or returned.

26 16. **Limiting Disclosure.** All reasonable efforts shall be made by
 27 counsel of record to limit disclosure of Confidential Information or Sensitive
 28 Confidential Information to the minimum number of persons necessary to conduct

1 this action or to maintain the security of the ticketmaster.com website.

2 17. **Access to Additional Person(s).** To the extent a Party decides
 3 that in order to understand or evaluate any Confidential Information the assistance
 4 of person(s) not otherwise entitled to access to Confidential Information is
 5 necessary, that party may request permission of the Designating Party to show such
 6 information to the specifically identified additional person(s). The Party receiving
 7 the request shall respond promptly and shall not unreasonably withhold consent. If
 8 permission is granted, the Confidential Information may be shown to the additional
 9 person(s), subject to the requirement that such person(s) agree to be bound by the
 10 terms of this Order and Agreement. Any disclosure of Confidential Information
 11 under this paragraph shall not result in a waiver or termination of any of the rights
 12 and obligations to any other Party or person under this Order. If permission is
 13 denied, the requesting Party may file an application *in camera* and under seal with
 14 the Court referencing the Confidential Information to be disclosed and, where
 15 appropriate, stating with particularity the reason or reasons assistance is needed,
 16 and naming the person to whom the Confidential Information is to be disclosed to
 17 obtain assistance.

18 18. **Challenges to Confidential Designation or to Redactions in**
 19 **Discovery Materials.** In the event the recipient party disagrees with any
 20 designation of confidentiality or with the redaction of any information in Discovery
 21 Material, the Parties shall attempt to resolve such dispute on an informal basis. If
 22 the dispute is not resolved informally, the recipient party, by motion, may contest
 23 the confidential designation or redaction. Pending resolution of the motion, the
 24 disputed material will continue to be treated as designated (*i.e.*, either Confidential
 25 or Sensitive Confidential). If the Court determines that any materials are not
 26 entitled to confidential treatment, confidentiality will nonetheless be maintained for
 27 fifteen (15) days subsequent to the Court's decision unless the Court, upon motion
 28 and for good reason shown, shall reduce or lengthen the time. If the Court

1 determines that any materials are not entitled to redaction, the producing party shall
 2 disclose the redacted information within fifteen (15) days subsequent to the Court's
 3 decision unless the Court, upon motion and for good reason shown, shall reduce or
 4 lengthen the time.

5 19. **Declassification.** The restrictions on disclosure and use of
 6 Confidential Information or Sensitive Confidential Information set forth herein
 7 shall not continue to apply to information, which, at the time of disclosure, or
 8 thereafter, becomes a part of the public domain by publication or otherwise, other
 9 than a result of a wrongful act or failure to act on the part of the Party claiming this
 10 exclusion. However, the restrictions shall continue to apply if such publication or
 11 other disclosure results from criminal, tortious or otherwise unlawful acts or
 12 omissions. A Party seeking to declassify material designated as Confidential
 13 Information may move the Court for a ruling that the material is not entitled to such
 14 status and protection.

15 20. **Right to Assert Other Objections.** This Order shall not be
 16 construed as requiring any Party to produce information or documents which are
 17 privileged or otherwise protected from discovery by the Federal Rules of Civil
 18 Procedure. Nothing herein shall be construed or applied to affect the rights of any
 19 Party to discovery or to assert any privilege or objection, or to prohibit any Party
 20 from seeking such further provisions or relief as it deems necessary or desirable
 21 regarding this Order or the matter of confidentiality.

22 21. **Use During Trial.** This Order is intended to govern the
 23 exchange and use of materials, information and Documents during discovery, trial
 24 preparation, and post-trial proceedings. Questions regarding the use of Confidential
 25 Information or Sensitive Confidential Information during the trial of this action, if
 26 any, will be addressed by the Court at a later time prior to or during trial.

27 22. **Subpoena or Order.** If a Party is served with a subpoena or an
 28 order issued in other litigation that would compel disclosure of any information or

1 items designated in this action as Confidential or Sensitive Confidential, counsel for
 2 the receiving party must so notify counsel for the Designating Party in writing
 3 immediately, and in no event more than three court days after receiving the
 4 subpoena or order. Counsel for the receiving party also must inform in writing the
 5 party who caused the subpoena or order to issue in the other litigation that some or
 6 all the material covered by the subpoena or order is the subject of this Order.

7 The purpose of imposing these duties is to alert the interested parties to
 8 the existence of this Order and to afford the Designating Party in this case an
 9 opportunity to try to protect its confidentiality interests in the court from which the
 10 subpoena or order issued. Nothing in these provisions should be construed as
 11 authorizing or encouraging a receiving party in this action to disobey a lawful
 12 directive from another court.

13 23. **Inadvertent Production.** If a Party through inadvertence
 14 produces or provides discovery that it believes is subject to a claim of attorney-
 15 client privilege, common interest privilege, or work product immunity, the
 16 producing party may give written notice to the receiving party that the Document is
 17 subject to a claim of attorney-client privilege, common interest privilege, or work
 18 product immunity and request that the Document be returned to the producing party.
 19 The receiving party shall immediately return to the producing party all
 20 copies of such Document and shall return or destroy all excerpts and summaries
 21 thereof. Return of the document by the receiving party shall not constitute an
 22 admission or concession, or permit any inference, that the returned Document is, in
 23 fact, properly subject to a claim of attorney-client privilege, common interest
 24 privilege or work product immunity, nor shall it foreclose the receiving party from
 25 moving for an order that such Document has been improperly designated as subject
 26 to a claim of attorney-client privilege, common interest privilege, or work product
 27 immunity or should be produced for reasons other than a waiver caused merely by
 28 the inadvertent production. The inadvertent disclosure of any privileged documents

1 shall not be deemed a waiver of that privilege as to any other Documents, testimony
2 or evidence.

3 **24. Enforcement.** This Order and Agreement may be enforced by
4 an order of specific performance, as well as any claim for damages. Nothing in this
5 Order abridges the right of any person to seek its modification by the Court in the
6 future.

7 AGREED TO BY:

8
9 Counsel for Plaintiff and Counterclaim-
10 Defendant Ticketmaster L.L.C. and
11 Counterclaim Defendant IAC/Interactive
12 Corp.

Date _____

12
13 Counsel for Defendant and Counter-
14 Claimant RMG Technologies, Inc.

Date _____

15 SO ORDERED:

16 DATED this _____ day of _____, 2008.
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19 DISTRICT COURT JUDGE
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EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address],
declare under penalty of perjury that I have read and understand the Stipulated
Protective Order that was entered by the United States District Court for the Central
District of California in the case of *Ticketmaster, L.L.C. v. RMG Technologies, Inc.*,
Case No. CV-07-2534 ABC (JCx). I agree to comply with and to be bound by all
the terms of this Stipulated Protective Order and I understand and acknowledge that
failure to comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any person
or entity except in strict compliance with the provisions of this Order. I further
agree to submit to the jurisdiction of the United States District Court for the Central
District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of
this action.

Date: _____

City and State where sworn and signed:

Printed name: _____

Signature: _____